



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
<http://ethics.ky.gov/>

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Executive Branch Ethics Commission
ADVISORY OPINION 08-16
September 26, 2008

RE: May an officer for the Kentucky Board of Respiratory Care (hereinafter "Board") also serve as an officer for a professional organization for respiratory therapists?

DECISION: Yes, but the Board member would be precluded from participating in practically all matters that come before the Board.

This opinion is issued in response to your June 16, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 11, 2008 and September 26, 2008 meetings of the Commission and the following opinion is issued.

You provide the relevant facts as follows:

You serve as the Executive Director and ethics officer for the Board. You have been asked to determine whether an officer for the Board may also serve as an officer for a professional organization for respiratory therapists.

The mission of the Board is stated on the agency's website as follows: "The Kentucky Board of Respiratory Care is a government agency that regulates respiratory care practitioners and their services. The KBRC was established in 1990 to protect the citizens of the Commonwealth of Kentucky from unsafe practitioners and practices." Pursuant to KRS 314A.200 (1), the Board consists of seven voting members appointed by the Governor; four members shall be practicing respiratory care practitioners, two members shall be practicing pulmonologists, and one member shall be a citizen at large.

In Advisory Opinion 02-41, the Commission determined that pursuant to KRS 11A.005 and KRS 11A.020, an administrator and/or executive director for the Board is precluded from also serving as an officer for a national or state professional organization for respiratory therapists. The Commission was concerned in Advisory Opinion 02-41 that the professional organization may well lobby state officials on private issues of concern to the organization which

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may be opposed to the public interest that the Board is serving, and that the Board regulates the members of the professional organization.

KRS Chapter 11A applies to public servants and members of the Board are not public servants as that term is defined in KRS 11A.010(9). However, members of the Board are subject to Executive Order 2008-454. Paragraph seven (7) of Executive Order 2008-454 provides:

- (7) A state policy-making or regulatory board or commission member shall disclose to the other members of the board, commission, authority, council or committee of which he or she is a member, any direct or indirect interest in any undertaking that puts the member's personal interest in conflict with that of the agency. This disclosure shall be made in writing or shall be recorded in the minutes of a formal meeting. A member who is required to publicly disclose a direct or indirect interest shall abstain from all decisions concerning his or her interest if the decision should affect him or her as a member of a business, profession, occupation, or group in a manner different from other members of the business, profession, occupation, or group.

There is no provision in Executive Order 2008-454 that specifically precludes an officer of the professional organization from serving concurrently as a member of the Board. However, pursuant to Executive Order 2008-454, such a Board member would have a conflict of interest every time a matter affecting the professional organization or the regulation of its members is before the Board. Since the Board regulates the members of the professional organization, almost all matters before the Board would constitute a conflict of interest for the Board member. Executive Order 2008-454 would require the Board member to publicly disclose each and every conflict in writing or in the minutes of the meeting, and the Board member would be required to abstain from all decisions in the matter. In effect, the Board member would not be allowed to participate in the decisions of the Board.

In order to avoid this situation, the Governor may want to refrain from appointing members who are officers in a professional organization to the Board that regulates the same profession. Further, at the time of appointment the Governor may want to consider requesting that the individual appointed to a regulatory Board not become an officer of a professional organization for the profession regulated by the Board during his or her tenure as a Board member.

Executive Branch Ethics Commission

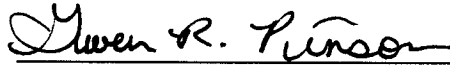
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Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

A handwritten signature in cursive script, reading "Gwen R. Pinson", positioned above a horizontal line.

By Chair: Gwen R. Pinson

Enc. Advisory Opinion 02-41

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 02-41
September 11, 2002

- RE: (1) May a Board's administrator and/or its executive director also serve on the national or state professional organization?
- (2) May the Board's administrator and/or its executive director work as a respiratory therapist in Kentucky?

DECISION: (1) No.
 (2) No.

This opinion is in response to your July 1, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 11, 2002, meeting of the Commission and the following opinion is issued.

You state the following relevant facts. The Kentucky Board for Respiratory Care (the "Board") is actively in the process of hiring a new Board Administrator. The Board Administrator may be asked to serve in offices for the national and/or state professional respiratory organizations. These organizations lobby state officials regarding issues of concern to the respiratory care community, and these organizations also provide continuing education to respiratory professionals in Kentucky. Additionally, the state professional respiratory care organization sends a list of nominees to the Governor's office for appointment to the Board.

You ask the following:

- (1) *Is it a conflict of interest or inappropriate for our Executive Director and/or Board Administrator to also serve in offices for the National and/or State Professional Respiratory Organizations?*
- (2) *Is it appropriate for our Executive Director and/or Board Administrator to work as a Respiratory Therapist in Kentucky?*

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KRS 11A.005(1)(a) and (d) provide:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

...

(d) The public has confidence in the integrity of its government and public servants.

KRS 11A.020(1)(a) and (b) provide:

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

In Advisory Opinion 97-25 (a copy of which is enclosed), the Commission concluded the Executive Secretary of the Board of Physical Therapy should not serve as a lobbyist employed to influence agency decisions or legislation that affects private interests. Additionally, in Advisory Opinion 93-38 (a copy of which is enclosed), the Commission advised the Commissioner of the Department of Mines and Minerals that he should not serve as an officer or voting member of the board of directors of the Kentucky Mining Institute, a professional organization of predominately coal-industry operators. Similarly, the Commission believes that the Board Administrator and/or Executive Director may be a member of national and state respiratory care organizations, but

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should not serve as an officer or lobbyist for such professional organizations that may well lobby state officials on private issues of concern to the organizations. The private interests here are those that the respiratory care organizations may have on behalf of their members. These interests may well be opposed to the public interest that the Board Administrator and/or Executive Director is serving, as the Board regulates those very members of the respiratory care organizations. As such, the Board Administrator and/or the Executive Director may not serve in any sort of officer capacity for these organizations, which would include not serving as a lobbyist or in any policy-making position for the organizations.

The Commission believes that the Board Administrator and/or Executive Director may not work privately as a respiratory therapist because the Board directly regulates respiratory therapists in Kentucky. Such work would present a conflict of interest between the Board Administrator's and/or Executive Director's private interest and duties in the public interest.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 97-25
Advisory Opinion 93-38